

ANNEX VI

MEETING NATIONAL DEFENSE REQUIREMENTS - SECURITY OF SUPPLY

1. INTRODUCTION

Among the consequences of globalization and industrial restructuring are the creation of transnational defense companies, possible loss of certain domestic industrial capabilities and capacities, and increasing acceptance of mutual defense interdependence. In this environment, the Governments recognize the value of dialogue, consultation, and arrangements that facilitate the supply of defense articles and defense services. As a consequence, the Governments believe that it is desirable that each Government utilize a Priorities System that provides for preferential treatment of contracts and subcontracts that promote national defense and support to Allies.

This Annex is an implementing arrangement to the "Declaration of Principles for Defense Equipment and Industrial Cooperation" dated the 5th day of February 2000. It is intended as specific implementation of the "Meeting National Defense Requirements" section in the Annex to that document. It sets forth the principles each Government intends to follow to provide reciprocal priorities support.

II. DEFINITIONS

- a. *Security of Supply* - a nation's ability to assure a supply of defense products, materials and services sufficient to discharge its military commitments in accordance with its foreign and security policy requirements.
- b. *Priorities System* - procedures under which a Government can assign priority to, and provide preferential acceptance and performance of, certain contracts (including subcontracts and purchase orders) over other contracts to meet approved defense requirements. As defined here, a Priorities System addresses only the Industrial Resources defined below.
- c. *Industrial Resources* - materials, services, and facilities, including construction materials, needed to

meet approved defense requirements. This term includes any raw, in process, or manufactured material, article, commodity, supply, equipment, component, accessory, part, assembly, or product of any kind, technical information, process, or service. Industrial Resources, for the purposes of this arrangement, do not include commercial end items commonly available in the country of the supplier.

III. MAJOR PRINCIPLES

Security of Supply presupposes, where possible, bilateral cooperation and coordination, including the mutual acceptance and support of industrial resource priorities set by either Government.

Complementary, mutual Priorities Systems arrangements between the Governments are important to ensure that industrial resources needed to meet critical defense requirements are provided in a timely, effective, and efficient manner. Such Priorities Systems are not designed to rectify poor provisioning and should not be used as a substitute for the normal contracting process.

Each Government will provide reciprocal priorities support. The US will provide priorities support by utilizing its existing Priorities System that is based on national law. The UK will provide reciprocal priorities support by utilizing its system that is based on a Government-Industry Code of Conduct.

To the greatest extent practicable, each Government will at all times (including, but not limited to crisis, emergency, or armed conflict):

- a. assign or facilitate the assignment of priority designations to specified defense contracts that are issued by the other Government, or by contractors, subcontractors, or suppliers working on an approved defense program requirement of the other Government, to suppliers located in its territory and participating in the relevant Priorities System,

- b. facilitate the acceptance and priority performance by participating contractors, subcontractors, or suppliers located in its territory of designated defense contracts as necessary to meet customer delivery requirements,

c. when requested, provide assistance to seek to resolve conflicts among designated contracts in order to ensure timely delivery of Industrial Resources under these contracts, and

d. as appropriate, and on a reciprocal basis, endeavor to enter into Security of Supply arrangements with other Governments that are members of the North Atlantic Treaty Organization, the European Union, and other Allies.

IV. ACTIONS

US

In furtherance of the above principles, and when requested to do so by designated UK Ministry of Defence authorities, the US Department of Defense will arrange for the UK Ministry of Defence, or UK contractors, subcontractors, or suppliers, to use priority ratings on defense contracts placed with US contractors, subcontractors and suppliers. Priority performance will be provided under the US Defense Priorities and Allocations System (DPAS). The US DPAS:

a. establishes priority designations for contracts performed in the US, and provides preference in performance of those contracts,

b. defines US industry's responsibilities, setting forth rules to ensure timely delivery of industrial products, materials, and services to meet approved national defense program requirements,

c. provides assistance procedures to cope with special circumstances caused by production related problems, and

d. sets forth compliance procedures.

The Office of the Under Secretary of Defense (Industrial Policy) will keep the US defense procurement community informed of all UK companies participating in the UK DPAS (see below).

UK

In furtherance of the above principles, the UK Ministry of Defence will maintain and support procedures under which UK companies are requested to participate in a Code of Conduct

approved by the Governments. The Code of Conduct describes a system known as the UK Defense Priorities and Allocations System (UK DPAS). The UK Ministry of Defence will notify the US Department of Defense of the UK Companies participating in UK DPAS. The Code of Conduct with UK industry requires accredited UK Companies to do all they reasonably can in accordance with US contracts procedures to provide preference to contracts supporting US Department of Defense programs, including:

- a. accepting that a contract they are entering into or are party to with the US Department of Defense or with a US company will be accepted as a contract falling under UK DPAS (UK DPAS contracts) where that contract would qualify for rating under US DPAS if entered into with a US Company;
- b. inserting provisions into any subcontract designed to ensure due performance of such a contract;
- c. responding in a timely manner to requests of the US Department of Defense for amendments to the timing of deliveries provided that the customer is willing to compensate them as required by the relevant contractual provisions, and
- d. bringing to the attention of the Governments conflicts between UK DPAS contracts and other contracts.

In relation to UK DPAS contracts, the UK Ministry of Defence will liaise with accredited UK contractors, subcontractors, and suppliers as described below, when requested to do so by the US Deputy Under Secretary of Defense (Industrial Policy) and/or the involved UK Company. The UK Ministry of Defence will use its best efforts to facilitate US Department of Defense requests for priority performance.

In the event that a UK Company intends to refuse to provide priorities support requested by the US Department of Defense, the UK Government will, as detailed in the Code of Conduct, investigate the circumstances surrounding the case. The US Department of Defense will have the opportunity to provide the UK Ministry of Defence with details of the case. The UK Company will be entitled to respond either in writing or orally. The UK Ministry of Defence will consult with the UK Department of Trade and Industry.

- a. If the UK Ministry of Defence considers that the UK

Company has acted reasonably, the UK Ministry of Defence will, if requested to do so by the UK Company, notify the US Department of Defense. The US Department of Defense will act on that notification as it considers appropriate. The UK Ministry of Defence will use its good offices with the US Department of Defense to resolve any remaining difficulties. Participation of the UK Company in the UK DPAS and the benefits received under the system will not be affected.

b. If the UK Company is considered to have acted unreasonably, the UK Ministry of Defence will request assurance that the Company will take such steps considered necessary to rectify the situation. Failure to comply with this request may result in the participation of the UK Company in the UK DPAS being suspended or terminated.

In the event that a UK Company cannot satisfy a request to amend a UK DPAS contract without incurring a financial loss, and the relevant customer is unwilling to reimburse it, the Company may reasonably decline the request. Under no circumstances will a UK Company be required to suffer a loss without compensation in order to fulfill the commitments detailed in this Annex.

US and UK

The UK and US do not intend to place the financial responsibility of implementing this Annex in the UK with UK industry.

All commitments of the Governments under this Annex will be subject to the availability of funds for such purposes.

In fulfilling their commitments under this Annex, the Governments recognize that US and UK Companies may have contracts with other customers, which the Governments do not wish to undermine.

When a US or UK Company brings a conflict relating to prioritization of supply between the UK and US Governments or any other customer to the attention of the Governments, the Governments will endeavor to resolve the conflict by consultation. Each Government reserves the right to decide final prioritization requirements within its territory, and the other Government will give deference to such requirements.

Participation in the UK DPAS may be offered by UK companies as an indication of their reliability in supplying industrial resources to the US Department of Defense and the contractors supplying it. Likewise, US companies may offer being subject to the US DPAS as an indication of their reliability in supplying industrial resources to the UK Ministry of Defence and the contractors supplying it.

V. PROCEDURES

Essential to the implementation of this Annex and the ability of the Governments to provide priorities support to each other when needed is the designation of a point-of-contact within each Government. This person serves as the focal point for the implementation and administration of this Annex and is the person to whom all requests for priority designations, priorities assistance, and related issues should be directed.

US

In the US, the Department of Commerce oversees and administers the US DPAS. The Department of Commerce has delegated to the Department of Defense authority under the US DPAS to apply priority designations to contracts supporting approved national defense programs. The Department of Defense conducts daily US DPAS operations and sponsors allied nation requests for priorities support in the US to the Department of Commerce for approval.

a. Requests for priorities authorization and/or assistance in the US should be directed to:

The Deputy Under Secretary of Defense (Industrial Policy)
3330 Defense Pentagon
Washington, DC 20301

b. Copies of correspondence should be provided to:

Bureau of Industry and Security
Attention: DPAS
Room 3876
US Department of Commerce
Washington, DC 20230

UK

In the UK, the Defence Procurement Agency will administer this Annex. Priority assistance will be handled on an ad hoc basis between Government and Industry. The Department of Trade and Industry will keep under review this assistance on the basis of information it receives with a view to understanding and responding to issues that affect the interests of UK industry.

Requests to apply priority designations and/or assistance to contracts supporting UK defence projects may be sent direct from Integrated Project Teams in either the Defence Procurement Agency or Defence Logistics Organisation.

This MOU Annex does not affect the special arrangements for emergency procurement, which remain via established channels of communication with British Defence Staff Washington and United Kingdom Defence Procurement Office Washington.

- a. Requests for priorities assistance in the UK under this MOU Annex should be directed to:

International Relations Group 2
Defence Procurement Agency
Maple 1a # 2133
MoD Abbey Wood
Bristol BS34 8JH

- b. Copies of correspondence should be provided to:

DPA Sec CDC
Defence Procurement Agency
Maple 1c # 2120
MoD Abbey Wood
Bristol BS34 8JH

SRG MA
Defence Procurement Agency
Yew 1c #1154
MoD Abbey Wood
Bristol BS34 8JH

Department of Trade and Industry
Manager, Defence Industries
151 Buckingham Palace Road
London SW1W 9SS

US and UK

Representatives of the Governments will review their established Priorities Systems policies and procedures at the request of either Government; and will adjust them and the provisions of this Annex as feasible and necessary to comport with evolving national Priorities Systems and to provide Security of Supply. Industry will be consulted during any such review.

If either Government considers it necessary to discontinue its participation under this Annex, it will notify the other Government in writing of its intent to withdraw from the Annex. The two Governments will immediately consult to evaluate the consequences of such withdrawal and the possibility of avoiding it by, inter alia, continuing the cooperation under the Annex on a changed basis. If agreement cannot be reached on the way forward, this Annex will be terminated six months after the date of notification.

ANNEX VII

FLOW OF TECHNICAL INFORMATION

Section 1 INTRODUCTION

1.0 This Annex implements the flow of technologies and Technical Information provisions of the Declaration of Principles for Defense Equipment and Industrial Cooperation between the Department of Defense (DoD) of the United States of America and the Ministry of Defence (MoD) of the United Kingdom of Great Britain and Northern Ireland dated 5 February 2000.

Section 2 DEFINITIONS OF TERMS

2.0 The Governments have jointly decided upon the following definitions for terms used in this Annex:

Contracting Agency	An entity within the United States Government (USG) or Her Majesty's Government (HMG) which has authority to enter into, administer, and/or terminate contracts.
Contractor	An entity awarded a contract by a Contracting Agency of the USG or HMG.
Technical Information	Knowledge of a scientific or technical nature that can be communicated by any means, regardless of form or type, including, but not limited to, photographs, reports, manuals, threat data, experimental data, test data, computer software, software documentation (including source code), designs, specifications, processes, techniques, inventions, drawings, technical writings, sound recordings, pictorial representations, and other graphical presentations, whether in magnetic tape, computer memory, or any other form and whether subject to copyright, patent or other legal protection.
Third Party	A government other than the USG or the HMG and any person or other entity whose government is not the USG or HMG.

Section 3 OBJECTIVES

3.1 The objectives of this Annex are to:

3.1.1 Ensure the timely flow of Technical Information between the Governments and between their defense-related industries;

3.1.2 Establish arrangements to improve the processes relating to the disclosure, transfer, and use of Technical Information between the Governments consistent with respective national export control laws, regulations, and procedures, national disclosure policies, and proper safeguards; and

3.1.3 Encourage the harmonization of the regulations, policies, and procedures of the Governments for controlling disclosure, transfer, and use of Technical Information in the field of defense.

Section 4 GENERAL PROVISIONS

4.1 This Annex will be in accordance with the Governments' respective national laws, regulations, and procedures and carried out in accordance therewith. The responsibilities of the Governments under this Annex will be subject to the availability of funds for such purposes.

4.2 Where a Government becomes aware of a subsequent change to its national laws, regulations, policies, or procedures that may affect the understandings established under this Annex, that Government will consult with the other Government to mutually determine whether this Annex should be amended.

4.3 Nothing in this Annex impacts in any way export control or national disclosure laws, regulations, policies, or procedures. Export control and national disclosure issues must be referred to the appropriate authority.

Section 5 MANAGEMENT AND ORGANIZATION

5.1 The implementation and application of this Annex will be monitored by the Joint Technical Information Group (JTIG). The JTIG will be jointly chaired by the responsible Deputy Director of Defense Procurement (Program Acquisition and International Contracting) on behalf of the USG and by the Director of

Intellectual Property Rights on behalf of HMG. The co-chairs will select other individuals, as appropriate, to serve on the JTIG. The JTIG will have one standing working group, the Export and Licensing Working Group (ELWG), jointly chaired by designees of the USG and HMG. The JTIG may establish other working groups on particular issues as needed.

5.2 The JTIG will be responsible for:

5.2.1 Executive-level monitoring of the implementation and application of this Annex.

5.2.2 Encouraging the harmonization of the Governments' regulations, policies, and procedures for controlling disclosure, transfer, use, and related matters of Technical Information in the field of defense.

5.2.3 Consideration of proposals for harmonizing and improving provisions related to the disclosure, transfer, and use of Technical Information in cooperative project arrangements or governmental sales arrangements.

5.2.4 Exploration of contractual and related issues regarding shared data environments.

5.2.5 Undertaking appropriate steps to explore the development of training opportunities or forums concerning Technical Information flow for government and industry personnel involved in cooperative project arrangements or governmental sales arrangements.

5.2.6 Facilitating the resolution of issues that arise relating to implementation of this Annex to limit the need to refer the issue to higher officials for resolution.

5.2.7 Facilitating the reciprocal treatment of contractors by the Governments regarding Technical Information.

5.2.8 Examining methods of assisting cooperative projects in the proper use of streamlined export license processes.

Section 6 DEFENSE TRADE AND SECURITY INITIATIVES

6.1 The Governments will use their best efforts to take full advantage of governmental defense trade and security Initiatives

(including global project authorizations) in the planning and implementation of cooperative project arrangements.

Section 7 TECHNICAL INFORMATION PROVISIONS

7.1 In keeping with the goal of reducing barriers to effective defense cooperation, the Governments will use their best efforts to ensure that, under cooperative project arrangements, the USG and HMG receive Technical Information acquired in or made available for the scope of work of those arrangements, that is necessary to operate fully and safely, support, and dispose of their defense systems, to the extent consistent with their respective export control laws, regulations, and procedures and national disclosure policies and the specific disclosure and use provisions of the pertinent cooperative project arrangements.

7.2 Recognizing the importance of ensuring consistency of the provisions for information disclosure and use of cooperative project arrangements with those of the contracts that implement the scope of work of those arrangements, the Governments will ensure coordination with, and as necessary between, their acquisition (including contracting) personnel and intellectual property rights personnel, during the negotiation of such arrangements. The Governments will ensure that US and UK industries are appropriately consulted during the negotiation of cooperative project arrangements leading to jointly funded contracts. The Governments will also ensure the consistency of such contracts with the provisions of the pertinent cooperative project arrangements.

7.3 In each cooperative project arrangement that involves contracting for the work required under such arrangement, each Government's Contracting Agency will insert into its contracts suitable provisions to satisfy the arrangement's provisions regarding export controls, disclosure, retransfer, and use of Technical Information and defense equipment.

7.4 In any cooperative project arrangement that involves jointly funded contracts for the work required under those arrangements, the applicable Government's Contracting Agency will keep the other Government informed of developments during the contracting process. Source selection information will be transferred only if approved by the Source Selection Authority and then only to individuals who have signed forms agreeing not to disclose such information. Such forms will not prohibit the disclosure of project-related Technical Information that is not

source selection information to authorized Government officials.

7.5 The Government of a Contracting Agency will notify the other Government, in a timely manner, of any requirement for the export, disclosure, transfer, and use of Technical Information of a cooperative project arrangement which might not be met under a contract implementing the affected arrangement. When any requirement for the export, disclosure, transfer, and use of Technical Information of a cooperative project arrangement cannot be met, the Governments will consult with one another to determine how to proceed with the execution of the affected arrangement.

7.6 The Governments will make their best efforts to identify the Technical Information that will be required to achieve the objectives and scope of an individual cooperative project arrangement. The Governments will also make their best efforts to identify that Technical Information that may be subject to restrictions as a result of national disclosure policies and export control requirements.

7.7 Where a Government wishes to purchase directly from industry defense equipment or software that was developed by or on behalf of the other Government, the Governments will consult, upon the purchasing Government's request, as to the appropriateness of entering into a cooperative project arrangement or a governmental sales arrangement which includes the provision of Technical Information and technical assistance necessary to fully and safely operate, support, and dispose of the defense equipment and software concerned.

7.8 When such action would be appropriate and efficient in implementing a cooperative project arrangement or governmental sales arrangement, and subject to national laws, regulations, and procedures regarding security and export controls and to the information disclosure and use provisions of the applicable arrangement, each Government will consider permitting Technical information generated by that Government's personnel, which is in the possession of its Contractors, to be transferred directly by those Contractors to the other Government or that other Government's Contractors.

7.9 Where a Government is requested to provide defense equipment, software, or services to the purchasing Government, the provisions of the associated governmental sales arrangement may reflect the purchasing Government's request for greater

rights in Technical Information than would normally be provided under such arrangements. In the event that such rights cannot be secured, or can only be secured at additional cost, the purchasing Government will be promptly notified of such event.

7.10 It is recognized that there may be instances in which a Government makes a direct commercial purchase of defense equipment or software that has been developed under contracts funded by the other Government. It is further recognized that in some of those instances the purchasing Government might place contracts relating to that equipment or software which result in the generation of additional Technical Information relating to that equipment or software. If the developing Government requests this additional Technical Information, the Governments may enter into a governmental sales arrangement pursuant to which the purchasing Government uses its best efforts to provide the developing Government the right to receive, use or have used, any such additional Technical Information necessary to enable the developing Government to repair, maintain and operate its defense equipment or software.

7.11 Subject to security and export control laws, regulations, and procedures, and national disclosure policies, Technical Information provided with a Request for Tender/Proposal by a Government to qualified sources in the other Government's country will be the same as that provided to its national qualified sources.

7.12 To assist in protecting contractor Technical Information arising under a cooperative project arrangement, the contractor will be directed to mark all Technical Information. The Contractor will also be required to set forth any restrictions relating to the disclosure of the Technical Information or use of the Technical Information. Technical Information will not be presumed to be available for unrestricted export, disclosure, transfer, and use by the contracting Government unless specifically designated.

7.13 Recognizing the importance of software documentation (including source code) in cooperative project arrangements, the Governments note that Technical Information includes software documentation (including source code) and that the provisions of this Section 7, entitled "Technical Information Provisions", apply thereto.

Section 8 RECOUPMENT CHARGES

8.1 Regarding governmental sales arrangements for defense equipment between the Governments, the selling Government will waive recoupment charges related to recovery of its non-recurring development and production costs on a case-by-case basis, to the extent authorized under its national laws and regulations. Regarding direct commercial sales arrangements between industry and one Government involving defense equipment developed by or for the other Government, the developing Government will waive, or otherwise not impose, recoupment charges related to recovery of its non-recurring development and production costs on a case-by-case basis, to the extent authorized under its national laws, regulations, and procedures.

8.2 Regarding governmental sales arrangements between a Government and a Third Party, and direct commercial sales arrangements between industry and a Third Party, cooperative project arrangements will not contain provisions requiring or authorizing the DoD and MoD to impose upon such sales arrangements recoupment charges for the recovery of each other's non-recurring costs for the cooperative development or production of defense equipment and Technical Information. The foregoing sentence will not apply to cooperative project arrangements into which the DoD and MoD have entered prior to the date that this Annex becomes effective, and will also not apply to individual cooperative project arrangements in those cases in which the DoD and MoD jointly decide that such application is not in their best interests.

Section 9 FINANCIAL PROVISIONS

9.1 Each Government will bear the costs associated with its responsibilities under this Annex.

Section 10 AMENDMENTS

10.1 This Annex may be amended by mutual written consent of authorized representatives of both Governments.